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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

UNITED PUBLISHERS CORPORATION,

Plaintiff and Respondent,

v.

ALEXANDER PESIN,

Defendant and Appellant.

B203580

(Los Angeles County
Super. Ct. No. BC097104)

APPEAL from an order of the Superior Court of Los Angeles County, Mark Mooney, Judge. Affirmed.

Law Offices of Mark Rabinovich, Mark Rabinovich and Anthony P. Malecki for Defendant and Appellant.

Mentis Law Group and Diane L. Mancinelli for Plaintiff and Respondent.

I

INTRODUCTION

Defendant and appellant Alexander Pesin (Pesin) appeals from the order denying his motion to be relieved from default and default judgment entered in favor of plaintiff and respondent United Publishers Corporation (United Publishers). We affirm.

II

FACTUAL AND PROCEDURAL BACKGROUND

A. *The underlying facts*

Oleg Meerovich was the cousin of Pesin's wife. On March 14, 1991, Genesis Appliance Co. (Genesis Appliance) was registered as a fictitious name of Meerovich with the Secretary of State. The business location was listed at 658 North Hayworth Avenue, No. 5, Los Angeles, California 90048.

From July 8, 1991, through July 6, 1992, Meerovich or Pesin signed 27 written contracts with United Publishers for yellow page advertising for Genesis Appliance. Pesin signed 17 of the contracts as either "owner" or "co-owner" of Genesis Appliance.

On March 15, 1993, Genesis Appliance Corporation was incorporated by Meerovich. A January 7, 1994, statement of officers filed with the Secretary of State shows Pesin as the president of Genesis Appliance Corporation, with his address at 827 North Alta Vista Boulevard, Los Angeles, California 90046.

On February 17, 1994, Olex, Inc. was formed, with Pesin as its president. (The name "Olex" appears to be a combination of the first names of Pesin and Meerovich – Oleg and Alex.) On September 27, 1995, Mood, Inc. was formed, with Pesin as its president. On November 22, 1996, Contr & O.L.E.X., Inc. was formed, with Pesin as its president.

In February 2005, Pesin pled guilty to conspiracy to launder money. As part of the scheme, Pesin had formed a corporation named LB Systems, Inc. to process credit card transactions involving child pornography.

B. United Publishers's lawsuit and the judgment against Pesin

On January 20, 1994, United Publishers filed a collection lawsuit against Pesin, Meerovich, and Genesis Appliance Corporation. The lawsuit alleged that the named defendants were responsible for unpaid yellow page advertising based upon the 27 contracts in the total sum of \$54,456, plus interest.

Two proofs of service, both dated February 1, 1994, showed that Pesin and Meerovich were served personally at 12332 Rummymead #1, North Hollywood, California, by registered process server John Ackerman. Ackerman also signed a third proof of service stating that on the same day and at the same hour (1450 hours) he effectuated service on Pesin, as agent for Genesis Appliance Corporation, at 827 North Alta Vista Boulevard, Los Angeles, California.

On May 20, 1994, Meerovich, Pesin, and Genesis Appliance Corporation were served with a request for entry of default. Pesin and Genesis Appliance Corporation were served at 827 North Alta Vista Boulevard, Los Angeles, California 90046. Meerovich was served at 12332 Rummymead #1, North Hollywood, California 91605. Default was entered against Pesin, Meerovich, and Genesis Appliance Corporation on June 8, 1994.

On November 7, 1994, United Publishers obtained a default judgment against Genesis Appliance Corporation, Meerovich, and Pesin in the total amount of \$67,777.29, including interest and attorney fees.

On October 14, 2004, United Publishers applied for, and obtained, a renewal of judgment, which increased the total sum owing to \$135,599.47, including interest. A proof of service showed that Pesin was served at 827 North Alta Vista Boulevard, Los Angeles, California 90046 with the renewal of judgment.

Because Meerovich had filed for bankruptcy protection on July 13, 1994, on behalf of himself and also known as Genesis Appliance Corporation, the renewed judgment was vacated, pursuant to stipulation on March 24, 2005, as to Meerovich and Genesis Appliance Corporation. Notice of this action was served on Pesin at 827 North Alta Vista Boulevard, Los Angeles, California 90046.

C. Pesin's motions for relief

1. Pesin's motion to vacate the renewal of judgment

On March 22, 2007, Pesin filed a motion to vacate the renewal of judgment. The trial court denied the motion on June 8, 2007.

2. Pesin's motion to set aside the default and default judgment

On July 13, 2007, Pesin filed a motion to set aside default and default judgment based upon extrinsic fraud or mistake. In his relief motion, Pesin declared that he had never been served with the summons and complaint or the renewal of judgment and he did not know about the case until he attempted to refinance his home in early 2007. Additionally, Pesin asserted in argument and through his declaration that he had a meritorious defense because while “[t]he signature[s on the invoices look] like mine, . . . I have serious reservations about [their] authenticity and definitely have no recollection of ever signing the purchase orders. However, all other handwritten things, including the name ‘Alex Pesin’ under ‘Print Name’ or the title ‘owner’ or ‘co-owner’ are not in my handwriting.” Pesin further declared that he was neither “owner” nor “co-owner” of Genesis Appliance, and even if he signed the contracts, he did not understand them because in 1991 and 1992 he was a newly arrived immigrant who barely spoke English.

Pesin argued that he could not be responsible for the contractual obligations with United Publishers because Genesis Appliance was a fictitious business of Meerovich. In his declaration, Pesin admitted helping Meerovich with Genesis Appliance. However, Pesin declared that he was not Meerovich’s partner and he was not an owner of Genesis Appliance. Pesin also declared that he did not receive compensation or benefits for any work he performed for Meerovich, and did not make any capital contributions to the business.

In addition to the above statements, Pesin presented his declaration, in which he declared the following: Prior to 1993, he and his wife lived at 827 North Alta Vista Boulevard, Los Angeles, California. They lived at 828 North Hayworth Avenue, Los Angeles, California, from 1993 to 1999, at which time they moved to their current residence in Woodland Hills, California. He was never served with the summons and

complaint in this lawsuit and Meerovich's home address was 12332 Runnymede #1, North Hollywood, California. In early 2007, Pesin discovered the abstract of judgment when he tried to refinance his home in Woodland Hills, California. Prior to that time, he was unaware of the case and the default judgment, which were filed after he moved out of the North Alta Vista Boulevard home. He was never served with the renewal of judgment.

United Publishers opposed the motion.

In a hearing held on September 20, 2007, the trial court denied Pesin's motion for relief. On January 3, 2008, the trial court entered an order denying Pesin's motion for relief. Pesin appealed from the January 3, 2008 order. We affirm.

III

DISCUSSION

The only issue before us is whether the trial court abused its discretion in denying Pesin's motion to set aside the default and default judgment based upon extrinsic fraud.

When a motion to vacate a default judgment is made more than six months after a default has been entered, the motion "is directed to the court's inherent equity power to grant relief from a default or default judgment procured by extrinsic fraud or mistake. [Citations.]" (*Aheroni v. Maxwell* (1988) 205 Cal.App.3d 284, 290-291.) Extrinsic fraud includes situations such as " '[w]here the unsuccessful party has been prevented from exhibiting fully his case, by fraud or deception practiced on him by his opponent, as by keeping him away from court, a false promise of a compromise; or where the defendant never had knowledge of the suit, being kept in ignorance by the acts of the plaintiff ' " (*Kulchar v. Kulchar* (1969) 1 Cal.3d 467, 471.)

Pesin argued in the trial court that the default judgment was obtained by extrinsic fraud because he was precluded from presenting a defense in that he was never given notice of the pending action. (*Estate of Sanders* (1985) 40 Cal.3d 607, 614 [extrinsic fraud includes situations where the defendant was kept in ignorance of the proceedings].) Because Pesin asked the trial court to exercise its inherent equitable powers to set aside the default and default judgment based upon extrinsic fraud, he had the burden to prove a

meritorious case, an excuse for not presenting a defense, and diligence in bringing the motion. (*Moghaddam v. Bone* (2006) 142 Cal.App.4th 283, 290-291.)

Motions to set aside defaults and default judgments are left to the sound discretion of the trial court. Thus, we review the trial court's ruling for abuse of discretion. (*Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 981.)

When the trial court is presented with declarations, it is for the trial court to determine the weight of evidence and the credibility of the declarants. (*Van Slyke v. Gibson* (2007) 146 Cal.App.4th 1296, 1300.) Where issues are tried on declarations, we review the trial court's rulings in favor of the prevailing party. This standard of review applies not only to the facts stated in any ruling, but also to all facts which reasonably may be inferred from a ruling. Further, if there are conflicts in the facts presented, we do not disturb the trial court's rulings upon controverted facts. These rules relating to our standard of review apply to rulings on motions for relief from default. (*Goya v. P.E.R.U. Enterprises* (1978) 87 Cal.App.3d 886, 891.) "Even though contrary findings *could* have been made, an appellate court should defer to the factual determinations made by the trial court when the evidence is in conflict. This is true whether the trial court's ruling is based on oral testimony or declarations. [Citation.]" (*Shamblin v. Brattain* (1988) 44 Cal.3d 474, 479, fn. omitted.) Thus, the trial court was free to believe or disbelieve all or some of the statements in Pesin's declaration. (*Estate of Wright* (2001) 90 Cal.App.4th 228, 239.)

Here, the trial court was presented with the proof of service by process server Ackerman who declared that personal service was made on February 1, 1994, on Pesin at the Rummymead address, which was Meerovich's home address. Pesin suggests this proof of service was defective on its face because it contradicted the other proof of service executed by Ackerman that showed Pesin was also served as agent for Genesis Appliance on the same date, at the exact same time (1450 hours), but at a different address, on North Alta Vista Boulevard. However, a logical inference from the controverted facts is that there was a typographical error in the service declaration for the corporate entity, and that all service was accomplished at the Rummymead address. This

conclusion is supported by Pesin's statement that he did not reside on North Alta Vista Boulevard in 1994.

Further, given the other facts presented, the trial court apparently concluded that Pesin's stated ignorance of the lawsuit was feigned and not to be believed. As demonstrated below, Pesin's denial that he was responsible for the contracts was not credible, leading to the result that many other statements by him also were not to be believed. (Evid. Code, § 780; see CACI No. 107.) Thus, since Pesin was served, he had no excuse for not presenting a defense.

Pesin argues he was not responsible for the contracts. He claims he was not an "owner" of Genesis Appliance even though he was identified as "owner" or "co-owner" on each of the 17 contracts bearing his signature. Pesin admitted these signatures appeared to be his and these 17 signatures bearing his name are similar to the one on Pesin's declaration. Additionally, the trial court compared these signatures and concluded Pesin had signed the contracts. (Evid. Code, § 1417 [genuineness of handwriting may be proved by comparison made by trier of fact]; *People v. Rodriguez* (2005) 133 Cal.App.4th 545, 552-554 [handwriting expert not required to determine authorship].) Further, Pesin was designated on the 17 contracts as "owner" or "co-owner" of Genesis Appliance. Pesin was connected to the entity by the statement of officers that was filed with the Secretary of State where he was listed as its president. These facts support the trial court's implied finding that Pesin had an ownership interest in Genesis Appliance, despite his protestations to the contrary. As an owner of the entity, Pesin was responsible for its debts.

Additionally, by representing himself as an "owner" or "co-owner" of Genesis Appliance, Pesin is foreclosed from arguing that he is not responsible for the debts of the business. (Evid. Code, § 622 [facts recited in written instrument are conclusively presumed to be true as between the parties thereto]; *Estate of Wilson* (1976) 64 Cal.App.3d 786, 800-802 [discussing estoppel by contract].)

Pesin argues that even if he signed the contracts, he was an immigrant and lacked the sophistication to understand what he was doing. However, Pesin did not just sign one

contract with United Publishers. Rather, he signed 17 contracts over a period of months. Further, the last contract was signed on July 6, 1992. Less than a year later, Pesin was listed as its president, suggesting he had some understanding of how corporate entities function and he had sufficient sophistication to understand the contracts he signed. This conclusion, and the conclusion that Pesin was sophisticated in business dealings, is further supported by the facts that in 1994, 1995, and 1996, he formed three other corporations. And, in 2005, he was convicted of being a participant in a conspiracy to launder money in which he formed a fourth corporation. From these facts the trial court could reasonably conclude that Pesin was not an unsophisticated person who was unaware of the consequences of signing contracts for yellow page services. Rather, Pesin had sufficient understanding to enter into binding contracts with United Publishers.

Pesin did not demonstrate he had a meritorious defense to the lawsuit.

As stated above, the trial court impliedly found that Pesin had been served and thus was aware of the lawsuit. Therefore, Pesin was not diligent in bringing his motion for relief.

Pesin did not meet his burden to prove that he was entitled to equitable relief based upon extrinsic fraud. The trial court did not abuse its discretion in refusing to set aside the default and default judgment.

IV

DISPOSITION

The order is affirmed. Pesin is to bear all costs on appeal.

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ALDRICH, J.

We concur:

KLEIN, P. J.

CROSKEY, J.